IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 902 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHIKHABHAI JETHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 902 of 1992

MS KUSUM M SHAH for Petitioner No. 1-2

Mr.A.J.Desai, learned A.P.P.for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 18/07/2002

ORAL JUDGEMENT

1. The present appellants/original accused in the Sessions Case no. 63/92 have filed this appeal under Sec. 376 of the Criminal Procedure Code against the sentence and conviction passed in Sessions Case no.

63/92 by the Addl.Sessions Judge, Palanpur on 5.9.92 under Sec. 323 and 504 read with Sec. 114 of the Indian Penal Code and under Sec. 3 & 7 of the Protection of Civil Rights Act, 1955. As per the said judgment and order, both the accused were sentenced to simple imprisonment for one month and fine of Rs.100/- in default simple imprisonment for 5 days under Sec. 323 & 504 of I.P.C. and simple imprisonment for one month and fine of Rs.100/- in default simple imprisonment for 5 days under Sec. 3 & 7 of the Protection of Civil Rights Act, 1955. Both the sentences were ordered to run concurrently.

2. It appears that both the appellants have paid the fine and therefore they were released on bail. Ms.K.M.Shah L.A. for the appellants submitted that the trial court has erred in convicting both the accused under Sec. 3 & 7 of the Protection of Civil Rights Act as no charge was framed under the said Act. She has further contended that when the alleged incident took place, there was no law in force of the Schedule Castes, Schedule Tribes, Prevention of Atrocities Act, 1989 (hereinafter referred to as Atrocities Act) and therefore also when the chargesheet was filed in 1992, the court has erred in framing the charge of the same. The learned counsel for the appellants has further submitted that the Atrocities Act will apply to those persons who has produced the certificate to the effect that they belong to Schedule Caste and Schedule Tribe. In the present case, the prosecution has failed to prove that the complainant belongs to either Schedule Caste or Schedule Tribe. Therefore, no charge under the said Act can be framed. For this purpose, she relied on the judgment in case of Bharatbhai Patel V/s State of Gujarat reported in 2001(2) G.L.H. 636. The learned counsel also read the evidence on record and submitted that very minor bruise injury has been caused to the complainant and therefore also the conviction ordered to the appellants is on the higher side and therefore also fine can be imposed heavily. She further submitted that this is appeal of 1992 and we are in the mid of 2002, 10 years have already passed and therefore also the purpose will be served if the fine amount is increased. In view of the aforesaid submissions, learned counsel for the appellants submitted that the conviction and sentence be set aside and fine imposed on the appellants be increased reasonably and time be granted to pay the amount of fine.

3. The learned A.P.P. Mr.Desai has vehemently submitted that though Atrocities Act was not in force when the offence took place, when the charge was framed

it was in force and therefore the court has rightly framed the issue and it is difficult to defend that the prosecution has failed to prove the same. So far as Sec. 7 of the Protection of Civil Rights Act is concerned, according to Mr.Desai learned A.P.P. for the State, at the time of the alleged offence, as the Atrocities Act was not in force, the Court has applied the Protection of Civil Rights Act. While considering the injuries caused to the complainant, learned A.P.P. for the State has submitted that the injuries might be simple injuries, but the appellants have attacked the complainant who belongs to Schedule Caste, Schedule Tribe community with vengeance and therefore there is no need to alter the conviction and sentence passed and the appeal deserves to be dismissed with costs.

4. I have gone through the judgment of the trial court and also perused the depositions on record. It is true that the Atrocities Act has come into force on 11.9.89 whereas the present incident took place in June, 1989. On perusal of the said Act, it appears that it has not been given restrospective effect and therefore also the charge framed under the Atrocities Act is bad in law and not sustainable in the eye of law. If we peruse the charge at exh. 3 of the trial court dated 26.2.92, the court has not framed any charge under the Protection of Civil Rights Act, however, in the judgment in has raised the point no. 4 to the effect that whether the appellants-accused have committed any other offence? The answer was in the affirmative. I fail to understand when there is no charge framed under the Protection of Civil Rights Act, how the court can raise the point and answer it in the affirmative. Under the circumstances, the conviction and sentence of one month Simple Imprisonment and fine of Rs. 100/- in default simple imprisonment for 5 days is required to be set aside.

5. So far as Sec. 504 of the Indian Penal Code is concerned, it reads as under :

> " Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

While going through the aforesaid section, it appears that it relates to intentional insult with intent to

provoke breach of the peace. If we peruse the deposition of the complainant on record, it appears that the appellant no. 1 has introduced the complainant as the brother of Daniya ganda and hearing the same the accused no. 2 gave one blow on the upper portion of the left eye and thereafter the appellant no. 1 gave him blow on the stomach portion and also gave him kick blows. The cause for the blows was that the daughter of appellant no. 2 and the daughter of complainant were studying in the same school and when they were walking together, the daughter of appellant no. 2 told the daughter of the complainant not to walk with her. Due to this, there was a quarrel between the appellant no. 2 and the complainant. On the day of the incident, both the appellants told the complainant that he should be killed as he belongs to the lower community. At that time, Maganbhai Shankerbhai p.w. 3 at exh. 10 saved the complainant and took the complainant to Palanpur Civil Hospital for treatment with police yadi. The complaint of the complainant is given exh. 8, the panchanama of the place of the offence is at exh. 11 and the medical certificate is produced at exh. 17. That he remained in the hospital for 8 days and was treated as indoor patient. At the time of the incident, there was no street light and people of all the castes used to sit at the bus stand. Earlier there was no quarrel between both the accused-appellants and the complainant. As per the medical certificate there was injury of (1) incised wound of 3 x 1 cm. skin deep below the left eyelid, 2) The left eyeball and the skin above it was red and there was thickness of blood and 3) the right thigh was paining but there was no external injury and also no fracture was seen. The doctor stated that such injuries can be caused if wrist blow is given on the eye.

6. In the aforesaid circumstances, I am of the opinion that no fruitful purpose will be served if both the appellants are sent to jail. The purpose will be served if the sentence is set aside and both the appellants are ordered to pay heavy fine and the part of the amount be paid to the complainant as compensation. Accordingly, I am of the opinion that the conviction of one month of both the accused under Sec. 323 of the I.P.C. is set aside and both the appellants are ordered to pay fine of Rs.1,000/- each. So far as the Sec. 504 of the Indian Penal Code is concerned, both the appellants are ordered to pay fine of Rs.200/- each. The sentence under Sec. 3 & 7 of the Protection of Civil Rights Act is set aside. Hence, I pass the following order :

ORDER :

The conviction and sentence of both the appellants/accused under Sec. 323 of the Indian Penal Code is set aside and the amount of fine is enhanced to Rs.1,000/- each in default one month simple imprisonment.

Under sec. 504 of the Indian Penal Code, both the appellants are ordered to pay fine of Rs.200/- each in default 5 days simple imprisonment.

So far as the sentence under Protection of Civil Rights Act is concerned, it is quashed and set aside against both the accused.

The amount of fine, if any, paid by the appellants shall be adjusted from this amount.

Out of the amount of fine, Rs.2,000/- shall be paid to the complainant and Rs.400/- shall be deposited in the Government Treasury. Both the appellants to pay the fine within one month before the lower court. On such deposit the trial court shall inform the complainant to withdraw the amount.

The bail bonds shall stand cancelled, if fine is paid.

The appeal is allowed to the aforesaid extent.

(SHARAD D DAVE, J)

srilatha